

August 7, 2002

EMERA ENERGY SERVICES INC.
Request for Advisory Ruling Regarding
Waiver of Opt-Out-fee

ADVISORY RULING
AND ORDER GRANTING
WAIVER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We conclude that a waiver of opt-out fees would be warranted if the Law Court requires Emera Energy Services, Inc. (EES) to immediately terminate retail service, and EES customers are thereby forced to take standard offer service until their next meter read date. Accordingly, we grant a waiver of opt-out fees for EES customers that default to standard offer service and then re-enter the competitive market under the circumstances described in this Order.

II. BACKGROUND AND RULING

On March 21, 2002, EES obtained a license from the Commission to operate as a competitive electricity provider (CEP) in Maine (Docket No. 2001-843). On the same day, the Commission issued an Order in a parallel proceeding approving the creation of EES as an affiliate of Bangor Hydro-Electric Company (BHE) (Docket No. 2001-841). The approval of the creation of EES was appealed to Law Court on the grounds that the operation of EES is unlawful.

As a condition of its license, the Commission required EES to disclose to all prospective customers the existence of the appeal and the potential risks if EES loses its authority to provide retail service. Additionally, EES is required to arrange for another retail provider to fulfill its contractual obligations to its customers.

On June 20, 2002, EES filed a request for an advisory ruling, asking the Commission to conclude that the opt-out provisions of Chapter 301 would be waived if EES is required to immediately terminate retail service. EES states that a waiver would be appropriate because the purpose of the opt-out fee provision is to discourage customers and providers from "gaming" the system by switching between standard offer and retail service depending on relative price and market conditions. EES states that gaming is not implicated in a circumstance in which customers are forced to enter standard offer service because of a court ruling that a CEP must immediately cease service.

Interested persons were provided an opportunity to comment on the EES filing. The Commission received no comments.

We agree with EES's position and hereby issue an advisory ruling that a waiver of the opt-out fee provisions of Chapter 301 would be appropriate if the Law Court orders EES to terminate service causing its customers to default to standard offer service.¹ This ruling assumes that customers leave the standard offer at their next meter read date. Because we at this time conclude that good cause exists to waive the opt-out fee provisions, waivers are hereby granted, pursuant to Chapter 301, section 10, to EES customers that default to standard offer service under the circumstances described in this Order and return to the competitive market at their next meter read.

Dated at Augusta, Maine, this 7th day of August, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

¹ To the extent we have deviated from the advisory ruling procedures contained in Part 6 of Chapter 110, we hereby waive those procedural requirements.